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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,803	05/31/2001	Lawrence J. Choi	1005/006	6606
34060	7590	01/04/2006	EXAMINER	
MICHAEL N. HAYNES 1341 HUNTERSFIELD CLOSE KESWICK, VA 22947			PHAM, KHANH B	
			ART UNIT	PAPER NUMBER
			2166	
DATE MAILED: 01/04/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/867,803

Applicant(s)

CHOI ET AL.

Examiner

Khanh B. Pham

Art Unit

2166

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.



Continuation of 11. does NOT place the application in condition for allowance because:

Regarding claims 1, 5, 6, applicant argued that McLennan does not teach "plurality of variables" because "battery size" is not a variable. The examiner respectfully submits that "variable" is often used in the study of statistics and defined in McLennan as: "any trait that identifies different values for different people or items" (page 75). An ordinary person would know that batteries normally come in different sizes such as AA, AAA, C, or D. Therefore, "battery size" is variable because it identifies different values for different items, and meet the requirement of claims 1, 5 and 6 that "each variable have a plurality of possible value". McLennan teaches at page 81 the observations where battery life and battery size are variables and therefore anticipates the claimed "plurality of variable".

Applicant argued that McLennan does not teach "obtaining a data set containing no more than one proxy value for each of a plurality of variables, each variable having a plurality of possible values". On the contrary, McLennan teaches the data set containing only one size value (i.e., AA) and one life value (e.g., 423 minutes).

Applicant argued that McLennan does not teach "percent of proxy value for the plurality of variables". On the contrary, McLennan teaches at page 83 the percentage based on the proxy value "battery life".

Applicant argued that McLennan does not teach "obtaining a data set ...containing a cluster assignment for the observation, the cluster assignment identifying one cluster from a plurality of clusters". On the contrary, McLennan teaches at page 83 that each observation is assigned into a specific "class interval", which corresponds to applicant's cluster as claimed.

Applicant argued that McLennan does not teach "calculating a percent of proxy values for the plurality of variables that equals a mode of that observation's corresponding cluster's proxy values for the corresponding variable". On the contrary, McLennan teaches at page 83 a mode of corresponding cluster's proxy values, wherein the cluster (i.e., class interval) is in the range 360-439.

Applicant argued that McLennan does not teach "obtaining a data set for each observation". On the contrary, McLennan teaches the data set at page 81 obtained by testing multiple batteries and collecting battery size and life data values.

In view of the foregoing arguments, the 102 rejection is hereby sustained.